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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,657	08/25/2003	William Cohn	301492.1047-119	2131
207	7590	08/23/2005		
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109				
			EXAMINER JACKSON, GARY	
			ART UNIT 3731	PAPER NUMBER

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/647,657

Applicant(s)

COHN ET AL.

Examiner

Gary Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-14 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

*Gary Jackson*

### **DETAILED ACTION**

This action is responsive to applicants' amendment filed June 3, 2005. Claims 1-14 are pending in this application. The amendment and arguments have been considered, however, they are not deemed to be persuasive so as to place the application in condition for allowance.

#### ***Double Patenting***

Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,610,071. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 is broadened by removing a method step of particularly placing the suture through a cuff in the prosthetic device. It would have been within the purview of one having ordinary skill in the art to broaden claim 1, by not inserting the suture into the cuff per se.

Allowance of this claim would extend the "right to exclude" already granted in the patent claim 1. Likewise claim 2, it would have been within the purview of one having ordinary skill in the art to broaden the suturing device by removing the plurality suture pads.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meshalkin (Soviet Union 513,696) in view Phillips (US Patent 4,932,965), Ovil (US Patent 4,702,250) and Goldberg (US 2,591,063). Meshalkin discloses a suturing device substantially as recited, however it lacks clear recitations of visual indicators for identification purposes. Phillips suggests color-coding strands so as to be distinguishable from each when being tied together. Ovil further suggest color-coding to visually distinguish the sutures. Phillips teaches color-coding strands used for securing artificial valves as disclosed by applicants. Goldberg teaches using a double strand suture/needle for suturing and teaches that the double strands maybe visually distinguishable. Meshalkin discloses a suturing device adapted to secure portions of tissue together. The patent to Phillips recognizes the same problem of identifying sutures as the applicant and solves the problem by color-coding the sutures. It would have been obvious to one having ordinary skill in the art to provide Meshalkin with visual distinguishable sutures as taught by the secondary references. It further would have been obvious to secure the valve disclosed in Phillips with a color-coded double stranded suture of Meshalkin, Ovil, Goldberg and Phillips combination.

### ***Response to Arguments***

Applicant's arguments filed June 3, 2005 have been fully considered but they are not persuasive. The combination of references reasonably suggests a method of suturing a prosthetic valve with a color-coded double stranded suture. The base reference, Meshalkin discloses a double stranded suture adapted to secure a prosthetic

device. The combination of references reasonably suggests color-coding sutures. It would have been within the purview of one having ordinary skill in the art to color coded each of the suture sections of the double strand so as to readily identify said sections.

The examiner believes the action is proper and therefore made final.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (571) 272-4697. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8000.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Jackson  
Primary Examiner  
Art Unit 3731

A handwritten signature in black ink that reads "Gary Jackson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

gj  
August 20, 2005